



Washington, D.C. 20505

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28 JUN 1978

Honorable Birch Bayh, Chairman
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter of 26 May 1978 concerning our proposed firearms legislation. I very much appreciate your commitment to work with us on this matter.

In line with your request, please find enclosed our views on the firearms provision in S. 2525.

The desirability of including the firearms authority in charter legislation is of course appreciated. However, I am also deeply concerned with the lack of clarity in our existing statutory authority to support our current needs and practices. Therefore, I would urge that the Committee review its assessment of the importance and urgency of clearer authority in light of the serious complications that could arise.

Yours sincerely,

SIGNED

STANSFIELD TURNER

Enclosure

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VIEWS OF THE DIRECTOR OF CENTRAL INTELLIGENCE COMPARING
PROPOSED LEGISLATION CONCERNING FIREARMS AUTHORITY FOR THE
CENTRAL INTELLIGENCE AGENCY WITH PROVISIONS IN SECTION 421
OF S. 2525, THE "NATIONAL INTELLIGENCE REORGANIZATION AND
REFORM ACT OF 1978"

The provisions incorporated in subsection 421(i) of S. 2525, the intelligence charter legislation, address the issue of firearms authority for the Central Intelligence Agency, but are insufficient.

a. The language of subsection 421(i) grants authority for Agency personnel to carry firearms only within the United States. The Agency's proposal submitted to Vice President Mondale, on the other hand, authorizes Agency personnel to carry firearms, without geographic limitation; but, provides that, within the United States, firearms may be carried only for the specified purposes. In my view, this general grant of authority, coupled with limitations on domestic use of firearms, is the necessary and appropriate scope of any legislation.

b. Subsection 421(i) would authorize only Agency "employees" to carry firearms. S. 2525 contains no general definition of "employee." Moreover, the scope of other definitions of "employee" found in statutes, or as included in paragraph 441(a) of S. 2525, are not sufficient for purposes of including all Agency personnel within the scope of those who should be allowed to carry firearms. In lieu of the term "Agency employees," any firearms legislation should refer to "Agency personnel," as is reflected in the proposed legislation forwarded to Vice President Mondale.

c. Subsection 421(i) provides authority for Agency employees to carry firearms "for courier protection purposes." In my view, this formulation is ambiguous. For example, it is unclear whether authority to use firearms under this language would extend only to official Agency "couriers" or whether it would extend to other Agency employees specially designated to carry Agency information or other materials. It is also important that the language of the legislation reflect clearly that firearms authority runs to protection of the information concerning intelligence sources and methods. The wording of the proposal submitted by the Agency specifies that firearms may be authorized to protect "information concerning intelligence sources and methods and classified intelligence documents and material." This language would avoid problems that could arise if it were necessary to link protection of sources and methods to a particular set of circumstances or category of circumstances.

d. Unlike subsection 421(i), the proposed legislation submitted by the Agency explicitly provides that firearms may be authorized to protect "facilities, property, and any medium of exchange owned or utilized by the Agency." This is necessary, for example, to make clear that physical facilities of the CIA, which are subject to possible threats of violence, and which cannot, for reasons of security, always be protected in the same manner as Government properties generally, may be protected by the use of firearms. Furthermore, since the Agency on occasion needs to transport secretly sums of money or other mediums of exchange within the United States, the legislation must clearly authorize use of firearms for this purpose.

e. Subsection 421(i) should be read in conjunction with subsection 421(h), which authorizes the Director to appoint and assign "security officers to police the installations and grounds of the Agency"; these persons "shall have the same powers as sheriffs and constables" to protect persons and property. While it could be argued that subsection 421(h) provides authority for Agency personnel to carry firearms for purposes not enumerated in subsection 421(i)--such as intelligence information not in transit, monies, or physical facilities--in my view such an interpretation would be subject to dispute and would be insufficient. In the first place, legislative language authorizing a particular activity--in this case, the carrying of firearms--should be explicit, and the fact that subsection 421(i) explicitly enumerates certain circumstances under which firearms may be used, while subsection 421(h) does not so specify, would seem to at least raise a presumption that subsection 421(i) is intended to constitute the sole firearms-authority provision in the legislation. Moreover, even if subsection 421(h) were construed to include firearms authority (or if it were so amended), the present language of that subsection appears to extend only to protection of designated installations and grounds, and not to the protection of Agency information or materials, wherever located, not necessarily at Agency installations or grounds. Again, in my view, these authorities are necessary and are of sufficient importance that the operative statutory provisions should be as clear as possible.

f. Yet another aspect of this matter which subsection 421(i) fails to address is the transportation and utilization of firearms for training purposes. Given the other specific purposes for which the use of firearms would be authorized under this legislation, I believe the necessary related authority to transport and utilize firearms for training must itself be specifically included. The proposal submitted to the Vice President by the CIA includes language to this effect.

g. While both the Agency's proposal and subsection 421(i) include provisions authorizing the carrying of firearms to protect certain CIA personnel regardless of protection which might be based on another specified authority, I would like to point out that the Agency's proposed language includes particulars not in subsection 421(i), which were worked out jointly with the Department of Justice. For example, the Agency proposal would limit exercise of this authority to 120 days, unless renewed. Also, the Agency proposal includes reference to "other Agency personnel," rather than "officials of the Agency." The term "officials" is a more restrictive and less-frequently used term in CIA personnel-related matters. Further, not only Agency "officials" but all Agency personnel may, in exigent circumstances, require protection. Since this authority would be based in the first instance on a designation by the Director or Deputy Director that other Agency persons require protection, there would seem to be no need to use the more restrictive and ambiguous term "officials" rather than "personnel."

h. Finally, I should like to point out that the Agency proposal, again unlike subsection 421(i), includes as a prefatory proviso that the carrying of firearms for all the purposes specified will be under regulations which the Director shall prescribe. In my view, this is an appropriate requirement which emphasizes that this important authority will only be utilized in necessary circumstances.